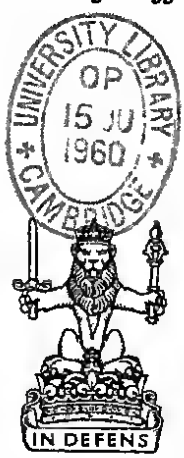
SCOTTISH HOME DEPARTMENT

Use of Short Sentences of Imprisonment by the Courts

Report of the Scottish Advisory Council on the Treatment of Offenders



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SCOTTISH ADVISORY COUNCIL ON THE TREATMENT OF OFFENDERS

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† Mr. Leburn resigned on 2nd November, 1959.
* A member of the Committee on the Use of Short Sentences of Imprisonment by the Courts.

27 QUEENSFERRY ROAD,
EDINBURGH, 4.
21st January, 1960.

SIR,

When you appointed the Advisory Council on the Treatment of Offenders you suggested that as one of their first tasks the Council might enquire into the use made by the courts of short sentences of imprisonment.

At the first meeting of the Council on 9th March, 1959, a committee was appointed (*a*) to review the use made by the courts of short sentences of imprisonment, including imprisonment in default of paying fines, and to examine the value and effects of short sentences; and (*b*) to consider the law restricting the imposition of imprisonment by the courts.

The committee heard evidence and prepared a report for consideration, in the first place, by the Council.

The Council endorsed the committee's report and I have the honour, on behalf of the Council, to submit it to you.

I am, Sir,

Your obedient Servant,

HARALD R. LESLIE

THE RT. HON. JOHN S. MACLAY, C.M.G., M.P.,
Her Majesty's Secretary of State for Scotland

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Report on the Use of Short Sentences of Imprisonment by the Courts

INTRODUCTION

1. At its first meeting on 9th March, 1959, the Council appointed us

"(1) to review the use made by the courts of short sentences of imprisonment, including imprisonment in default of paying fines, and to examine the value and effects of short sentences; and

(2) to consider the law restricting the imposition of imprisonment by the courts".

The Secretary of State had asked the Council for early advice on these matters.

2. We have held 12 meetings. At the second of them we decided to invite several individuals and bodies to submit evidence, and also to indicate by advertisement in daily newspapers that we should welcome written statements from any source. The response to our invitations was satisfactory, and we subsequently had the advantage of hearing oral evidence from a number of persons and organisations. We wish to express our thanks to those who so willingly helped us in our enquiries: they are listed in Appendix A to this report.

3. Those of us who were not familiar with court procedure visited typical courts while they were in session; and those of us who had not been concerned with conditions in Scottish prisons paid visits to certain prisons in which short sentences are served.

4. Mr. Gilmour Leburn, M.P., was an active member of the Committee during much of its life, but resigned on his appointment as Joint Parliamentary Under Secretary of State for Scotland, before this report was drafted. We greatly appreciated his contribution to our work, and were sorry that he had to leave us.

THE PRESENT LEGAL POSITION

Powers of imprisonment

5. Where an offence is created by Act of Parliament the maximum sentence of imprisonment (if imprisonment is permitted) is specified in the statute, which may also prescribe the type or types of court in which the offence may be tried.

For a common law offence the maximum sentence depends upon the court in which the offender has been tried. The High Court of Justiciary has universal jurisdiction, and sole jurisdiction over some of the most serious crimes: the Sheriff Court under solemn procedure (i.e. the Sheriff sitting with a jury) may deal with any other offence tried on indictment: the Sheriff Summary Court has jurisdiction over all offences which may be tried summarily: the Burgh (Police) Court and the Justice of the Peace Court have a limited jurisdiction over offences which may be tried summarily, the more serious offences being

reserved for the Sheriff Court. The maximum sentence which may be imposed by each type of court is as follows:

High Court	life imprisonment.
Sheriff Court, under solemn procedure . . .	two years' imprisonment.
Sheriff Court, under summary procedure . . .	three months' imprisonment; or six months' imprisonment if the offender is convicted of (*a*) any offence inferring dishonest appropriation of property aggravated by at least two previous convictions of any such offence, or (*b*) any offence inferring personal violence aggravated by at least two previous convictions of any such offence.
Burgh (Police) or Justice of the Peace court . . .	60 days' imprisonment.

6. The following restrictions are placed by section 18 of the Criminal Justice (Scotland) Act, 1949, on the imposition of prison sentences on young offenders.

(*a*) *Persons under 17 years of age.* No court may impose imprisonment on a person under 17 years of age.

(*b*) *Persons 17 but under 21 years of age.* No court may impose imprisonment on a person under 21 years of age unless it is of the opinion that no other method of dealing with him is appropriate. In order to satisfy itself on this point it must obtain, from a probation officer or otherwise, information about the offender's circumstances, and must take into account any information before it about his character and physical and mental condition. In addition a summary court, other than the sheriff and the stipendiary magistrate, where it imposes imprisonment on a person under 21, must record in writing its reason for its opinion that no method of dealing with him other than imprisonment is appropriate.

The section provides a power to raise by Order in Council the age below which imprisonment is prohibited to 21 (or to a lower age between 17 and 21), if the Secretary of State is satisfied that the other methods of disposal available afford the courts adequate means of dealing with offenders below that age. No Order in Council has yet been made.

Imprisonment in default of paying a fine

7. When it imposes a fine on an offender the court may order the offender to be imprisoned if he fails to pay the fine. Alternatively it may order the fine to be recovered by civil diligence, but this power is very seldom used except where the offence has been committed by a company, in which case civil diligence is mandatory.

8. The maximum term of imprisonment which an offender may be required to serve in default of paying a fine is as follows:

Fine imposed in summary proceedings

Not exceeding five shillings	Five days
Exceeding five shillings but not exceeding one pound	Ten days

Exceeding one but not exceeding three pounds	Twenty days
Exceeding three but not exceeding five pounds	Thirty days
Exceeding five but not exceeding twenty pounds	Sixty days
Exceeding twenty pounds	Three months

Fine imposed on indictment

Not exceeding twenty pounds	Three months
Exceeding twenty but not exceeding one hundred pounds	Four months
Exceeding one hundred but not exceeding five hundred pounds	Six months
Exceeding five hundred pounds	Twelve months

9. Parliament has from time to time enacted a number of provisions designed to secure that a fine is related to the means of the offender, and that he is given every reasonable opportunity to pay. These are now contained in the Summary Jurisdiction (Scotland) Act, 1954, and may be summarised as follows. The court, in determining the amount of the fine, must consider the means of the offender, so far as they are known to the court. It must allow at least seven days for payment, unless either the offender does not ask for time to pay, or the court is satisfied that the offender has the means to pay forthwith, tbat he has no fixed residence, or that for some special reason no time should be allowed. The court may allow payment of the fine by instalments of such amounts and at such times as it thinks fit, and may later vary the times and amounts of the instalments. The court may place an offender between 16 and 21 years of age under the supervision of a person appointed by the court during the time allowed for payment; and, if it does, it must consider a report by the supervisor before imprisonment in default ensues. The court may, at any time before imprisonment has resulted from the sentence, alter or modify the sentence; and where the offender has been committed to prison he may pay part of the fine to the prison governor, whereupon his term of imprisonment is proportionately reduced.

NUMBERS SERVING SHORT TERMS OF IMPRISONMENT

10. For the purposes of our enquiry we have taken a short sentence to mean one of six months or less: with full remission for good conduct an offender sentenced to six months' imprisonment is detained for four months.

Appendix B records the number of offenders received into Scottish prisons during 1958 for terms of six months or less, and subdivides them by type of offence; length of sentence; criminal record; sex; age; and type of sentencing court. Appendix C sets out the number of fines imposed in each year from 1934 to 1958, and the number of these sentences which resulted in imprisonment.

It will be observed that during 1958 11,184 offenders were received into prison to serve short sentences: this represents over 92 per cent. of all offenders received during the year. Of these 4,136, or 34 per cent. of all those received, were imprisoned in default of paying fines. Among those who came into prison were included 1,114 offenders under 21 years of age; and 1,571 who had had no previous conviction or finding of guilt-recorded against them.

11. In order to estimate the comparative extent to which the courts use short terms of imprisonment as a method of disposal we had figures taken out to show for 1957 the number of cases dealt with by the courts in each of the main ways available to them. The result is summarised in Appendix D.

12. The table in that Appendix also shows the extent to which in that year the courts in England and Wales used comparable methods of disposal. We recognise that direct comparisons between the practice of the courts on either side of the Border are liable to be misleading. Differences in the powers of the courts, in the relative incidence of various types of offence, and to some extent in the social background make it impossible to draw precise conclusions from the discrepancies which emerge. Nevertheless, after allowing for these differences, we thought it generally significant that proportionately fewer fines are imposed in Scotland than in England and Wales; that there is more imprisonment without the option of a fine in Scotland than in England and Wales—5 per cent. of all sentences as against 3·5 per cent. in England and Wales; that more sentences of imprisonment passed in Scotland than in England and Wales are short sentences—about 90 per cent. of all sentences of imprisonment in Scotland are for six months or less as against under 70 per cent. in England and Wales; that probation is less used in Scotland than in England and Wales—in 3 per cent. of cases as against 4 per cent.; and that more fines result in imprisonment in Scotland than in England and Wales—about 4 per cent. as against under 1 per cent. We have borne these comparisons in mind throughout our consideration of the subjects referred to us, without accepting either that uniformity between the two countries is desirable or attainable, or that the English practice can be assumed to be preferable.

PREVIOUS CONSIDERATION OF THE SUBJECT

13. We have taken into consideration the published reports made by three official Committees, which have a bearing on certain aspects of our remit. In 1934 a Committee appointed by the Home Secretary reported on " Imprisonment by courts of summary jurisdiction in default of payment of fines and other sums of money ". This report led to the passing of the (English) Money Payments (Justices' Procedure) Act, 1935, about which we shall have something to say later, and we do not reproduce any of it in this report. In 1949 the Scottish Advisory Council on the Treatment and Rehabilitation of Offenders, in the course of a report on " The Scottish prison system ", discussed short-term prison sentences. The relevant parts of this report are set out in Appendix E. In 1957 the Advisory Council on the Treatment of Offenders (for England and Wales) reported on " Alternatives to short terms of imprisonment ". Although their recommendations were made in an English context some of these proved to be interesting and helpful to us, and extracts from the report are also included in Appendix E.

THE VALUE AND EFFECTS OF SHORT SENTENCES

14. The chief question to which we have had to address ourselves is whether the Scottish courts are imposing too many short sentences of imprisonment.

In examining it we have felt obliged to proceed from first principles, and to consider how far the short sentence is a satisfactory and effective penal method. Any method of dealing with offenders must be tested by four criteria, namely whether it prevents the offender from breaking the law again; whether it deters others from committing the same type of offence; whether it is justifiable as a punishment, marking the community's reprobation of the offence; and whether, if it is a custodial sentence, it is necessary in order to protect society against the offender for the duration of the sentence.

15. We heard much evidence from those in the prison service to the effect that the short sentence does not offer an opportunity for positive reformation of character. During a long prison sentence a great deal can often be done to change for the better the outlook of the offender, to instil in him habits of industry and self-discipline, and to send him out determined to lead a law-abiding life. A period of even four months, however, is far too short to enable this to be achieved.

16. In itself this consideration is not conclusive, however. If a short sentence, without changing the anti-social attitude of the offender, impresses upon him the unpleasant consequences of law-breaking he may mend his ways in order to avoid a repetition of his prison experiences. We are satisfied that it does so operate in some cases, particularly where the prisoner is a woman, or a man who has moved in circles where the law is respected (although some of these offenders would have been sufficiently deterred by their court appearances). In very many other cases, however, the impact of prison is insufficient for the prospect of a further sentence to act as a restraining influence when the person is tempted to break the law again. The reason for this appears to be partly that many do not count the consequences before indulging in misdemeanours, and partly that many do not find the prison régime intolerable. We shall have more to say later about prison treatment during short sentences, but at this point we must record our opinion that no alteration of the régime which would be acceptable to modern opinion could greatly increase its deterrent value.

17. We have thus been led to the conclusion that the short sentence has only a limited value as a means of discouraging the offender from conduct which will lead to a further appearance in court. We can go even a little farther than this. A study made for us by the Research Unit which serves the Scottish Home Department and the Home Office has indicated that the short sentence is less effective in keeping a first offender out of further trouble than are several other penal methods. The Unit examined the subsequent history of 3,163 male offenders aged 17 and over who were first convicted in Scotland in 1947; and their survey is reproduced in Appendix F. Briefly, after eliminating a number of variables, they concluded that sentences of imprisonment for six months or less were less effective in preventing re-convictions than was either fining or sentencing to longer terms.

18. Unfortunately it is impossible to assess by any statistical research the effectiveness of the imposition of short sentences on offenders as a means of deterring others from committing like offences. It must be a matter for conjecture whether, if short sentences ceased to be passed, more offences of the kinds which attract these sentences would be committed. Housebreaking, theft,

breach of the peace and drunkenness, the four crimes which in recent years have accounted for the largest number of such sentences, have steadily increased in volume during these years; but it may be argued, of course, that without the threat of imprisonment even more of these offences would have been committed. We were told that in one area the imposition of imprisonment on persons convicted of being drunk in charge of motor vehicles has led to an immediate decrease in the number of such offences, but general conclusions can scarcely be drawn from this.

19. The common-sense opinion seems to us to be that the possibility of suffering deprivation of liberty, loss of privacy, and subjection to discipline in a community of law-breakers must discourage many potential offenders. This will operate most effectively where the individual also fears disgrace and the loss of social status. Paradoxically, it seems to lose deterrent value for those who have once experienced imprisonment; familiarity lessens its terrors, and the habitual petty criminal will sometimes prefer imprisonment to a fine.

20. Although we think that reformation and deterrence should be the primary purposes of any sentence we accept the view that it ought also to contain a punitive element. So long as imprisonment is regarded as a heavier penalty than a non-custodial sentence, in our opinion it must remain available for the more serious type of offence. One reason for this is that unfortunately some sections of the community assess the heinousness of a crime by the penalty which is imposed upon those who commit it. Another is that some offenders have nothing except their liberty of which they can be deprived by way of punishment. Imprisonment, by firmly expressing the community's reprobation of his crime, may incidentally have a salutary effect on the offender. There are, it seems to us, offences which ought to be punished by imprisonment, but which merit only short sentences.

21. To the last consideration of the four we do not attach great importance. If it is necessary to protect society against an offender the court will presumably decide to segregate him for a fairly long period. We do not think that courts treat the short sentence, or ought to treat it, as a means of preventing further misbehaviour by offenders during the very limited periods involved.

22. Thus, to summarise its advantages, the short sentence causes some offenders to refrain from further law-breaking; it has a certain value as a general deterrent; and it can be justified as a punitive measure. It has disadvantages also, however, and these must be considered before any conclusion can be reached about the desirability of the courts' continuing to use it as extensively as they now do.

23. Although it is difficult to generalise about the effect of a short term of imprisonment we are satisfied that in many cases the serving of the sentence makes it more likely, rather than less, that the offender will give way to further criminal impulses. The immediate impact of prison tends to rob a man, or a woman, of healthy self-respect: loss of personal belongings and privacy carries with it some loss of identity. There follows an association with other law-breakers, who have been guilty of a great variety of offences. In the present overcrowded state of the prisons it is impossible even to segregate the short-term man completely from the prisoner serving a long sentence. But when the present overcrowding is reduced and more segregation becomes possible we

still cannot see how classification and subdivision could be developed to such an extent as to prevent all risk of the individual short-term man being contaminated by association with others who are older, who are more hardened in crime, or who are incarcerated for other types of offence. There must always be real danger of criminal associations being formed in prison.

24. When the prisoner is liberated he is suffering the subjective handicaps of loss of self-respect and contamination, but at this stage he also meets a number of objective difficulties. The prison stigma which attaches to him may lead to the breaking up of his home and to difficulties in finding work. The extent to which offenders suffer these consequences of imprisonment varies greatly, of course, from person to person. There are parts of our cities where many have served sentences and prison carries no stigma. Even there, however, we have been told that it is not uncommon for a wife to stand by a criminal husband until he is sent to prison and then to break with him. In more respectable circles the stigma is a grave handicap, imposing hardship on the offender's family and almost certainly costing him his job.

25. We were particularly interested in the effect of imprisonment on prospects of employment, since it seems to us that if a prisoner can settle into a steady job on his release one of the most important conditions of his rehabilitation is fulfilled. The evidence we received was to the effect that a person who commits an offence connected with his work, for example by stealing from his employer or from his work-mates, has great difficulty in finding a job on release. Apart from this an unskilled worker, especially if this had been his first offence, finds no difficulty in obtaining a labouring job when he leaves prison. The few qualified tradesmen involved do not experience much difficulty, at least after a first offence. The occasional black-coated worker, however, has little prospect of returning to the type of work in which he was previously engaged, and for him imprisonment may mean such a loss of status and remuneration as to make it extremely hard for him to settle down to a law-abiding way of life. Thus we concluded that in searching for a job any ex-prisoner is severely handicapped if his offence was related to his work, and that the black-coated worker, whatever his offence may have been, is virtually compelled to accept an inferior kind of employment.

26. We also felt bound to take account of the effect of large numbers of short-term prisoners on the prison system itself. As has been noted in paragraph 10, in 1958 the prisons had to receive over 11,000 offenders sentenced to short terms; to feed, clothe, employ and supervise them for short periods; and then to organise their release. On this scale short-term prisoners place a very heavy burden on prison administration. We were told by prison governors, and indeed we saw for ourselves, that relatively one of these prisoners, who form over 90 per cent. of all receptions in a year, demands much more time and effort than a long-term prisoner. We understand that the average cost of keeping a man in detention is in the region of £1 a day, but the figure must be considerably higher for a short-term prisoner.

27. Those responsible for the administration of the prisons naturally recognise that their duty is to deal with the offenders committed to them by the courts, and that their difficulties are in a sense irrelevant to the question whether the court should send them so many offenders for such short periods. It is clear,

however, that if equally satisfactory methods could be adopted for dealing with some of these offenders the prison administrators would be enabled to devote more time and energy to more profitable reformative work with the prisoners serving longer sentences; and that these methods could scarcely be more expensive to the community than the short sentence is proving to be.

28. After carefully weighing the value and the effects of the short sentence we find ourselves in agreement with the English Advisory Council's view that it has " a definite and necessary place in our criminal law". But we are convinced that it is too widely used in present practice. For some offences, such for instance as child neglect, it can seldom be justifiable, particularly if grave consequences would ensue for the family. And for some offenders, notably those who are under 21 or who have not previously been found guilty of an offence, we think that short-term imprisonment should be ordered only in the last resort, since in all probability the effects on the offender will be harmful rather than beneficial.

PRE-SENTENCE ENQUIRIES

29. The evidence we have heard has suggested to us that some courts, particularly perhaps some Burgh (Police) and Justice of the Peace Courts, do not adequately weigh all the consequences of passing a sentence of imprisonment, and do not examine all the possible alternatives before imposing it. There appears to be at least a tendency to stereotype sentences, so that second or third convictions of particular types of minor crime are automatically followed by imprisonment for so many days. Current pressure of work in the courts may well be partly responsible for this practice; but it runs contrary to the view, which we accept, that the punishment must fit the criminal as well as the crime.

30. If the courts are to achieve this they must have before them a sufficiency of reliable information about the offender's personal history and circumstances. Since the Criminal Justice (Scotland) Act, 1949 came into force they have had adequate machinery for the purpose; but, although this machinery is being increasingly used, we doubt whether as yet it is operated frequently enough before a prison sentence is decided upon.

31. In the first place we think that, even where the offenders are neither young nor convicted for the first time, it would be desirable in future for the court to adjourn proceedings in more cases before passing sentence, in order to obtain reports by probation officers. We recognise that this course presents difficulties, especially where the composition of the court changes from time to time, but we are satisfied that these can be surmounted. It is also plainly undesirable in the interests of the offender that there should be undue delay in passing sentence upon him; but, unless in an exceptional case, the probation officer can produce an adequate report in a much shorter time than the full statutory period of three weeks' remand. In our view the importance of the court informing itself fully before taking the grave decision whether or not to send an offender to prison must override any procedural difficulties.

32. When the delinquent is under 21 years of age, under section 18 of the 1949 Act a court must observe certain requirements before sentencing him to

imprisonment: these are set out in paragraph 6. When they were introduced these requirements effected an immediate reduction in the number of young offenders sent to prison. Nevertheless in 1958 no fewer than 838 of them were given short sentences without the option of a fine; and, of these, 474 had no previous sentence of imprisonment and 137 did not even have a previous conviction or finding of guilt. It was suggested to us that some courts are not fulfilling the intention of Parliament that imprisonment should be imposed on young offenders only as a last resort, but may be making their minds up in advance of the submission to them of reports under section 18. If there is any such tendency we deplore it.

33. In England the safeguards provided by section 18 were extended by the First Offenders Act, 1958, to certain offenders over 21 years of age. The Act applies them to any convicted person who has not been previously convicted (since he became 17 years of age) of any offence punishable by imprisonment. As a result English Magistrates' Courts must now obtain information on any such offender, and must consider it before deciding whether or not to impose a prison sentence. If it decides upon imprisonment a Magistrates' Court must record its reasons for believing that no other method of disposal is appropriate.

34. In 1958 1,086 offenders with no previous offences were given short sentences in Scotland. We feel sure that, if the English procedure had obtained and the courts had been supplied with full reports, more suitable methods of disposal would have been found in some of these cases.

To introduce the English procedure into Scotland would involve abandoning the rule that the court is informed only of previous offences which are cognate to that with which the accused is now charged. If special provisions were to apply to first offenders, the court would have to know whether the persons convicted before it were first offenders or not. In some cases this would necessitate the court being made aware of previous convictions which, not being for offences cognate to the present offence, are not under present procedure brought to the notice of the court.

We are satisfied, however, that the rule regarding cognate offences should not be allowed to stand in the way of the desideratum that a court should inform itself fully about a first offender's personality and circumstances when it has under consideration the drastic penalty of imprisonment. Already an accused person's criminal history emerges in court when a probation officer has been required to provide a background report or when a report is submitted on his suitability for borstal training or corrective training. It is strictly relevant to the question whether an offender should be given a short term of imprisonment that he has previously been found guilty of an offence for which he could have been punished by imprisonment, whatever the nature of that offence may have been.

35. Accordingly we recommend that legislation should be introduced for Scotland on the lines of the First Offenders Act. In doing so we would add that, as in England and Wales, an offence which has resulted in a probation order should be deemed for this purpose to be a "previous conviction", although in Scotland no conviction is recorded when an offender is put on probation in a summary court. It seems to us that a person who has reverted to criminal ways after having been tried out on probation ought not to be given the advantage of legislation designed for the needs of first offenders.

ALTERNATIVES TO SHORT SENTENCES

36. We have come to the negative conclusion that too many short sentences are passed, and have suggested some possible ways of reducing their number. This can only be justified, however, if more satisfactory methods of disposal are available; and we have some positive proposals to put forward in this connection. It appears to us that the courts might make more use of some of the other weapons already in their armoury, but also that these might be strengthened and even supplemented.

37. From Appendix B it will be seen that in 1958 there were 1,293 housebreakers and 1,136 thieves received into prison for a second or subsequent short sentence. A number of our witnesses were critical of the sentencing practices illustrated by these figures. Several suggested that, where a first sentence of imprisonment had failed to deter a person from law-breaking of this kind, both his own interests and those of the community would best be served by his receiving a comparatively long sentence of imprisonment. During it he could be given reformative training with some hope of success; and at the worst society would be protected from his depredations for a substantial period. We were told that in England the courts appear to accept this doctrine, and to pass longer sentences than the Scottish courts for second and subsequent offences which indicate that the convicted person is embarking on a career of crime.*

38. We accept the view that this is desirable. At present, however, the Scottish courts are prevented in many cases from taking the appropriate action. If a persistent housebreaker is prosecuted summarily he can be given no more than six months' imprisonment, and our information is that summary proceedings are the rule rather than the exception in such cases. There would appear to be two possible ways of removing this obstacle to heavier sentences in suitable cases.

The first would be to limit the jurisdiction of the summary courts, including the Sheriff Summary Court, by withdrawing from their purview charges of committing second or subsequent offences of specified categories, such as serious housebreaking and assault. These cases would then be taken in the Sheriff Court under solemn procedure; and if a jury convicted the accused he would be liable to a sentence of up to two years' imprisonment.

The other alternative would be to increase the maximum sentence of imprisonment which the Sheriff Summary Court might impose for second and subsequent crimes, either of specified categories or generally. Since a sentence of anything less than one year is scarcely sufficient for the purpose we have in mind, this would involve doubling the maximum penalty.

39. To adopt the former alternative would have the advantages of retaining the right of the accused to trial by jury when a lengthy sentence may result from a common law charge; and of conserving his rights of appeal against sentence, which are more extensive in indictment cases than in cases taken summarily. If, however, all the charges which in our view ought possibly to

* In an article in the British Journal of Delinquency for July, 1956, entitled " A Comparison of Criminal Statistics of England and Wales with those of Scotland ", Mr. T. S. Lodge (who was then Statistical Adviser to the Home Office) pointed out that during 1954 the sentences passed in England and Wales for the group of offences corresponding to housebreaking were on the average almost three and a half times as long as those imposed for housebreaking in Scotland.

lead to a relatively long sentence were prosecuted on indictment, the congestion of work, which is already acute in many Sheriff Courts, would be greatly aggravated; and heavy additional burdens would be placed on Crown Counsel, Procurators Fiscal and the police. We are satisfied that these practical considerations would preclude the adoption of this expedient in the foreseeable future.

40. We recognise that the other course would involve a significant alteration of long-established jurisdictional limits. Already, however, the Sheriff Summary Court has power to impose sentences of one year for a number of statutory offences. Accordingly there does not seem to be any overwhelming objection in principle to giving the Court this increased power, notwithstanding the facts that the Sheriff will be trying the case without a jury and that the accused person's right of appeal will be more limited. If the maximum sentence is to be increased we think that its applicability should be restricted to the crimes of dishonesty and violence, aggravated by one or more previous convictions of a like nature. A maximum of six months at present applies to such a crime, aggravated by two or more previous convictions of a like nature; but since in our view the second conviction is critical we consider that the heavier penalty should be applicable at that stage. Accordingly we recommend that the Sheriff Summary Court should be empowered to impose a sentence of up to one year's imprisonment for such crimes.

41. An alternative type of custodial sentence will shortly be available for dealing with young offenders. We understand that early in 1960 the first Scottish detention centre will be opened, for delinquents who are 17 or over but under 21. Detention (under the law as it stands) will be for a period of up to three months, and the intention apparently is that the courts should commit to these centres young men who have shown that they are in danger of drifting into careers of crime and who need to be brought up sharply. We think that the opportunity of sentencing to detention in such a centre will be a valuable addition to the courts' powers. In detention centres the régime can be directed towards the objective of altering the outlook of these potential recidivists; and the risks of contamination and loss of self-respect which prison presents can be more readily avoided.

42. Turning now to the existing non-custodial methods of disposal we note that probation, although its use is slowly increasing, is not employed to the same extent in Scotland as in England and Wales, particularly for adults. This may be attributable partly to the lingering misconception that a probation order is a means of letting the offender off lightly. Training under a good probation officer calls for deliberate and sustained effort and self-discipline. It has great advantages over a custodial sentence: the offender is being treated in the environment in which he must continue to live; he is not exposed to the danger of compulsory association with other law-breakers; attempts are made to solve any domestic problems which have led to his misdemeanours; he will usually be able to continue at his job (if it is suitable); and he will not be handicapped by the stigma of a conviction. We are convinced that in many cases a probation order, possibly with suitable conditions attached to it, would be a more appropriate and efficacious method of disposal than a short sentence. And as the probation service develops, both in numbers and in the quality of its officers, the attractiveness of this alternative will further increase.

43. It was suggested to us that the value of probation would be increased if it were preceded by a short sentence of imprisonment, and that it would be desirable to empower the courts to impose such a combined sentence. The arguments advanced for this expedient were that it would remove any impression that probation is a "soft option"; that a short spell in prison would shock the offender into a frame of mind in which he was more prepared to accept guidance and supervision; and that the support of a probation officer would greatly help an offender upon whom prison had made the right impression to sustain his efforts to keep within the law.

44. We find ourselves unable to accept these arguments. Probation is a bond with the court, freely entered into by the offender, and it must lose much of its value if the probationer has not willingly incurred his obligations. An offender could not be expected to agree to probation preceded by imprisonment, and if he did not do so his relationship with the officer appointed to "advise, assist and befriend" him would be wrong from the outset. Moreover one of the main advantages of probation is that, if the probationer completes the period of the order successfully, no conviction is recorded against him, and he suffers none of the many handicaps which attach to the possession of a criminal record. Another is that the probationer is protected from the risk either that he will be contaminated by associations in prison, or that he will be familiarised with prison life so that fear of prison becomes a lesser deterrent for the future. These advantages would not accrue if imprisonment formed part of the sentence. Again, there are other—and we think better—ways in which a person who has served a short sentence might be helped to rehabilitate himself afterwards; we have more to say about these later. In short, we believe that to couple imprisonment with probation would be to sacrifice the distinctive advantages of the probation method.

45. Another alternative to the short sentence which was convassed before us was the suspended sentence. The proposal was that a court should pronounce a sentence of imprisonment at the time of conviction, but should postpone its execution so that it would be served only if during a specified period the offender committed another offence. We understand that arrangements of this kind are in force in some foreign countries; and the possibility of their introduction in England and Wales was considered by the Advisory Council on the Treatment of Offenders in 1951/1952: their report is appended to the Council's 1957 report on alternatives to short terms of imprisonment to which we have referred in paragraph 13. The Council then rejected the suspended sentence; and, for much the same reasons, we should not regard it as a desirable innovation in Scotland. Briefly, the main objections to it are that it would be extremely difficult for a court to decide upon a sentence which could appropriately operate at an unknown future date in circumstances which could not be foreseen; and that it might well be unjust for the sentence to be executed automatically when the offender committed a further offence of any kind. We find these considerations conclusive and cannot recommend the introduction of the suspended sentence.

46. Our attention was drawn, however, to a somewhat similar expedient which is adopted in practice by a number of Scottish courts. In cases which they regard as suitable for such treatment these courts defer sentence, without making an order, for a period which may extend to a year. At the end of that

period the court may decide, in the light of the offender's conduct in the interval, to admonish him or even to discharge him absolutely. Some courts take into account at that stage whether the offender has, for example, paid for damage or made good monetary loss which may have been occasioned by his offence.

47. We understand that the legality of the procedure of deferring sentence in this way has never been tested on appeal; and, since there are statutory provisions limiting the period for the adjournment of a case after a conviction has been recorded, doubt was expressed to us as to whether the practice is sound in law.

48. A deferred sentence does not have the positive advantages of a period of probation, with the possibilities of character-training which that affords. Nevertheless we were impressed by the argument that there are cases for which it may be more appropriate and suitable than probation would be. One example given to us was that of a young man (or woman) from a good home who was not set in delinquent ways and who, with the help of his parents, might be put on the right path if a sufficient threat were held over his head for a limited period. He might not require the services of a probation officer, or surveillance for a long period. Another type of case in which, we were told, deferred sentences are used is that of National Assistance frauds, where the court expected the offender to repay during the period of deferment the money he or she had fraudulently obtained. We are not convinced that as a general rule deferment with an implied condition of restitution is right in principle. As regards the offender the same effect could be achieved more directly by a fine, to be paid by instalments; and we do not think that the criminal courts should be saddled with the duty of obtaining recompense for the party which has suffered loss. But we recognise that there may be something to be said for this course in the occasional case, where the court wishes to assess the sincerity of an offender who has expressed contrition.

49. On the whole, therefore, we are disposed to think that the deferred sentence may occasionally be a suitable alternative to an immediate short sentence of imprisonment. It is not open to the two serious objections of principle, mentioned in paragraph 45, which led us to reject the suspended sentence, since the court retains complete freedom to deal with the offender as it chooses at the end of the period of deferment. We recommend that, if there are no compelling considerations to the contrary, a provision should be enacted removing any doubt about the power of the court to defer sentence for a discretionary period.

50. Fining is the method of disposal most commonly used by the courts: in 1957 almost four-fifths of all offenders were dealt with in this way. We have gained the impression, however, that it would be used even more, and in particular that some offenders at present sent to prison for a short term would be fined instead, if the courts were able to impose heavier monetary penalties. Not infrequently, it seems, the court comes more or less regretfully to the conclusion that a fine of the maximum amount which it can impose is an inadequate penalty in all the circumstances of the case.

51. The post-war increase in wages and salaries has in our view widened the scope for the imposition of monetary penalties. A fine is plainly an unsatisfactory expedient where the offender is very poor: it is absurd to exact money

from a man or woman who is dependent on National Assistance. And there will always he a few offenders with sufficient means not to fear a fine, unless it is so swingeing as to he out of proportion to very many types of offence. But in the large intermediate group there are now many who might be hardest hit through their pockets, if only the court were able to make the fine heavy enough. They include some who are at present given short sentences; for them, we suggest, a fine will often he preferahle.

52. We understand that a review of the adequacy of maximum fines fixed hy statute is at present heing carried out hy the Scottish Home Department (and hy the Home Office in England). There can be little doubt that this will result in proposals for increasing the maxima fixed hy Acts passed many years ago: the fall in the value of money would alone make this inevitahle. We should welcome, for example, an increase in the £2 maximum fixed for many offences of drunkenness: in a serious case the court frequently regards this as derisory and passes a short sentence of imprisonment, whereas the circumstances of the case would make a higher fine more appropriate.

53. There remains the common law crimes, however, for which the maximum monetary penalty depends on the court in which the offender is prosecuted. The present limits on conviction summarily are £10 in a Burgh (Police) Court or Justice of the Peace Court, and £25 in a Sheriff Court. It is true that where several offences are proved at the same time cumulative penalties amounting to more than this may be imposed; but this consideration does not materially reduce the inadequacy of these maxima. How inappropriate they are may be deduced from comparison with these courts' maximum powers of imprisonment —60 days in the Burgh (Police) Court or Justice of the Peace Court, and three months in the Sheriff Court. We recommend that the Burgh (Police) Courts and Justice of the Peace Courts should have power to impose fines of up to £50; and that the Sheriff Summary Court's maximum should he increased to £250— a penalty which incidentally is considerahly lower than the Sheriff Summary Court may already exact for some statutory offences. This would necessarily involve the adjustment of the maximum periods of imprisonment in default of paying fines, which are set out in paragraph 8; hut these periods are plainly out of keeping with the weight of the monetary penalties at present-day values, and ought to be reconsidered.

54. Our proposed alternatives to short sentences are thus longer terms of imprisonment in suitable cases; sentences of detention in detention centres for young men; an increasing use of prohation, particularly for adults; heavier fines than are at present permissible; and deferment of sentence in certain special types of case. We are satisfied that, if the courts exercise their sentencing discretion with due care, they will find it desirable to employ one or other of these methods in place of the short term of imprisonment in many cases where in the past they have sent the offender to prison.

CONDITIONS UNDER WHICH SHORT SENTENCES ARE SERVED

55. In examining the prohlem presented by the short sentence we have taken the circumstances under which the prisoner serves it as we found them.

Because of the pressure on the prison system which has built up in the past three or four years these are at present abnormal. (Part of this pressure is occasioned by the number of men and women in prison awaiting trial; 7,775 were so committed during 1958, and on average they represented 9·4 per cent. of the daily prison population. We understand that a remand centre, or centres, will be provided for this large group, and we would urge that this should be done as soon as possible.)

We were informed of a number of improvements that will be effected as more accommodation becomes available in the institutions; and we are proceeding to suggest some other changes, not at present contemplated, which we think merit consideration. Even if all these alterations were made, however, we are satisfied that they would not lead us to change our view that fewer short sentences ought to be imposed in future. Their result would be to make a short term of imprisonment more effectual in the smaller proportion of cases for which it would remain the most appropriate penalty.

56. Those connected with prison administration have told us about the difficulties inherent in dealing with men detained for short periods. They expressed particular concern about the near impossibility under present conditions of segregating these prisoners adequately from those serving longer terms; and about the lack of suitable work for men whom there was insufficient time to train. Our visits to the establishments convinced us that association with hardened criminals, and dreary repetitive work of a fairly unexacting nature, are the two main obstacles which prevent the régime from making its optimum impact on the short-term man. They are to some extent linked with each other, since in a large prison with a mixed population it would be very difficult to organise a separate and different régime for the short sentence man.

57. We suggest that the solution should be to divide the larger prisons into sections which are kept entirely separate from each other—one of them reserved for the short-termer. Ideally, special institutions should be established for adults given short sentences, but we appreciate that in Scotland geographical and economic considerations probably make this impracticable. These factors may also preclude the division of short-term men within one special establishment into persistent offenders and others; but this would certainly be a desirable development.

58. In these special establishments a much more rigorous régime should be introduced for those who are physically fit for it. We recognise that activity as intensive as should be possible in the detention centres could scarcely be enforced, if only because this would necessitate for adults repressive measures which would not be desirable, or indeed tolerable. But it should be possible to employ most of the men on hard productive work, preferably out of doors. This would not only help to inculcate habits of industry, even over a short period, but also make the prospect of a further sentence more forbidding to some than it is at present.

59. We are also concerned about another apparent shortcoming of the short sentence. Offenders who, as a result of their sentence, come out of prison with every intention of turning over a new leaf frequently relapse into crime because they lack support and help. The mere fact that they have been in prison may place them under real handicaps, and will require them to make exceptional

and sustained efforts to rehabilitate themselves. They may seek assistance from an after-care organisation, but very few of them do, and in any event the resources of the Discharged Prisoners' Aid Societies do not permit these bodies to undertake much case-work with this type of man or woman.

60. We attach special value to the use of after-care. For it seems to us that probably the most important period in a prisoner's life is that which immediately follows his discharge. It is then that he is going either to attempt to settle down to a law-abiding and useful life, or to relapse into bad ways. It therefore seems desirable that a court should have the power, when passing a short sentence, designed to teach an offender a lesson, also to require him to subject himself to compulsory after-care for a period. A short sentence in prison should begin a process which must be carried over into the first difficult period after discharge. In prison a man may learn, perhaps for the first time, that he can live a disciplined and healthy life; and he should be helped to persevere in living and working in an orderly way when he resumes normal life. A good after-care officer could do a great deal, both by giving moral support and in more practical ways, to help such an offender to settle down in the community again. Obviously this measure would be appropriate in only a limited number of cases, but the courts ought to be able to distinguish those in which it could usefully be applied. The sanction for failure to comply with the requirement would have to be recall to prison for the part of the sentence which had been remitted, or for a period specified by the court but not exceeding (say) two months, whichever is the longer period; but we do not consider that it would need to be invoked in many cases. If the court has decided wisely, the offender will have been prevailed upon by his prison sentence to seek a law-abiding way of life, and will welcome assistance in achieving it.

61. In our view after-care of this kind could be undertaken most satisfactorily by the probation service: advice, help and friendship are what the released prisoner will need, and the probation officer must already give these to offenders made subject to probation orders. We understand that in England the probation service at present undertakes the after-care of some types of offender, although not of the short sentence man; but that in Scotland the duties of probation officers, which are prescribed by or under statute, do not include any after-care work. The functions of the Scottish probation service are at present being reviewed by a Committee of Enquiry under the Chairmanship of Mr. R. P. Morison, Q.C. Subject to that Committee's views, however, we recommend that the Scottish probation service should be empowered to undertake the after-care of offenders sentenced to short terms of imprisonment for whom the courts have ordered it.

62. We venture to suggest that changes on the lines we have proposed in the preceding paragraphs would greatly improve the short sentence as a weapon of the courts, and of society, in combatting crime.

SHORT SENTENCES IN DEFAULT OF PAYING FINES

63. Direct sentences of imprisonment, however, account for only about two-thirds of those received to serve short terms: the remaining one-third are

committeed because they have failed to pay fines. In 1958, as we have mentioned in paragraph 10, 4,136 persons entered prison for this reason. The statement in Appendix B reveals that, of this number, 425 men and 60 women had not been previously convicted or found guilty; and Appendix C shows that the number included 401 persons under 21.

64. This seems to us to present in some ways a more serious problem than the large number of direct short sentences. As has been noted in paragraph 9 a series of provisions has been enacted with the deliberate purpose of trying to ensure that, if a court decides upon a fine as the proper penalty, the offender is given every chance to pay it. Imprisonment is normally the only satisfactory sanction to enforce payment, but it must surely be invoked only if the offender wilfully refuses to pay. The court, in specifying a sentence of imprisonment in default, is not providing an alternative penalty: it must be assumed to have decided that a monetary penalty is preferable to imprisonment. That being so, every effort should be made to exact the fine without resorting to imprisonment; and no offender should be imprisoned in default unless and until the court has specifically addressed its mind to the suitability of a prison sentence in his case.

65. We heard evidence which indicated that in many areas strenuous attempts are made, within the existing code and system, to keep the number of defaulters to the minimum. Some courts (but by no means all) permit payment by instalments; some are very ready to entertain applications for additional time to pay; and some will consider reducing a fine, on good cause being shown. Moreover we understand that it is a fairly common practice for clerks of court, no doubt with the general approval of the court, informally to accept instalments of fines, and also on occasion to delay setting in motion the procedure for imprisonment in default in order to give the offender a little more time to pay. And when the clerk does issue the extract conviction to the police for enforcement, the police apparently exercise a measure of discretion in arresting the offender: if they can secure payment of the penalty in the course of a few days they prefer to do this rather than to apprehend him at once.

66. It was suggested to us that in the result very few offenders are imprisoned who are genuinely unable to pay; and in support of this we were told that many fines are paid as soon as the sanction is invoked and the offender goes to prison. To establish whether this is the case we have examined particulars of all the fine defaulters received into Barlinnie Prison, Glasgow, in the third quarter of 1959. Out of a total of 745 men 310 served their sentences in full; and, of the remainder, 174 did not pay their fines during the first week of their sentence. It seems fair to deduce that most of these 484—almost two-thirds of the defaulters—could not pay, although admittedly a few of this number may have preferred imprisonment to payment: and we cannot help thinking that the situation this discloses could be improved.

67. We have given some thought to the practical steps which might be taken to reduce the number of fine defaulters. Our conclusions are that fewer defaults would occur if all courts were to exercise the existing statutory powers set out in paragraph 9 as fully as some courts already do; and that the number could be still further reduced if certain amendments of the law were made.

68. The first requirement laid upon a summary court which decides to impose a fine is that in determining the amount of the fine it shall take into

consideration *inter alia* the means of the offender so far as they are known (see section 41(1) of the Summary Jurisdiction (Scotland) Act, 1954). We understand that the prosecutor always gives the court the information which the police have been able to glean about the offender's financial position, and that this is usually sufficient to give the court a fair picture of his means. After the fine has been imposed, however, his circumstances may change; he may lose his job, for example, or have to incur new domestic obligations. We think that every court ought to be prepared to take such changes into account, and to reconsider at a later date the amount of the penalty, or the time allowed for payment, or both.

69. Under statute the court may allow further time only on application by or on behalf of the offender (see section 42(5) of the 1954 Act); and, although it may reduce the sentence *ex proprio motu* (see section 57(2)), no special procedure is specified for bringing the question before the court, and in practice it is raised (if at all) on an application by the offender. It seems to us that there ought to be some further safeguard which would ensure that imprisonment is not enforced unless the court is satisfied that the offender has been able to pay but has wilfully refused to do so.

70. Such a safeguard already exists in England and Wales, by virtue of sections 69 and 70 of the Magistrates' Courts Act, 1952. These provisions empower a court to commit an offender to prison immediately after he has been convicted and fined, but only if he has failed to pay the fine and also if (*a*) he has sufficient means to pay it at once; or (*b*) on being asked he says that he does not wish time to pay; or (*c*) he has no fixed abode; or (*d*) for some other special reason. Where time is allowed for payment, or payment by instalments is ordered, the court may not at the time of conviction fix a term of imprisonment in the event of default unless it decides that it ought to do this having regard to the gravity of the offence, to the character of the offender or to other special circumstances; and if it decides to impose an alternative term of imprisonment it must record its reason for doing so. In all other cases the defaulter must appear at a later date before the court, which must then inquire into his means, before he can be committed to prison.

71. These provisions were originally enacted in the Money Payments (Justices' Procedure) Act, 1935, before which the procedure in England for the enforcement of fines was not dissimilar from the present procedure in Scotland. We have ascertained that when the 1935 Act came into force it effected a marked reduction in the number of committals to prison in default. In recent years the proportion of fines which lead to imprisonment has been about four times as great in Scotland as in England and Wales; and we surmise that one reason for the difference must be the absence from the Scottish procedure of provisions on these lines.

72. In principle we think it would be desirable that the court should have an opportunity, before an offender is committed to prison in default, of satisfying itself that its initial assessment of the penalty which he can reasonably be expected to pay was accurate, and that no changes of circumstances in the interval have led to the fine becoming too heavy. In practice we recognise that this would increase the work of the courts, if only because the offender will have to be seen again (or for a first time if he pled guilty by letter): but the

advantages of the revised procedure seem fully to justify introducing this further step. So far as we can see the English provisions are suitable, with very few modifications, for adoption in Scotland, and we recommend that legislation should be introduced accordingly.

73. Provisions on these lines would incidentally rectify what appears to be a defect in section 18 of the Criminal Justice (Scotland) Act, 1949. The section does not expressly state that the restrictions which it embodies upon the imprisonment of persons under 21 apply to imprisonment in default of payment of fines; and we understand that the question whether they do so apply has not been conclusively determined by judicial decision. According to our information some courts do not regard themselves as bound to obtain and consider information about a young offender's circumstances before imposing a prison sentence as an alternative to a fine; and some Burgh (Police) and Justice of the Peace Courts do not record the reason for their opinion that no other sentence is appropriate. If, however, imprisonment in default is normally to be imposed at a later sitting of the court, after a means enquiry, it appears that the requirements of section 18 would then clearly apply. We are satisfied that this would be most desirable, since we are concerned about the number of young offenders who are being imprisoned in default.

74. Scottish courts of summary jurisdiction already have power to allow fines to be paid by instalments (see section 43(1) of the 1954 Act). The extent to which this power is exercised appears to vary considerably, however, from court to court. We obtained figures showing the numbers of cases in which it had been used during a recent period of three months in each Sheriff Summary Court and in several Burgh (Police) Courts. A few Sheriff Courts had allowed payment by instalments in about five per cent. of cases; but the Burgh (Police) Courts in Glasgow, Aberdeen and Dundee had not exercised the power in a single case, and the Edinburgh Police Court had done so in only one. It was suggested to us in evidence that practical considerations accounted for the failure of many courts to permit fines to be paid in this way; and in particular that the work involved in collecting, checking, recording and accounting for instalments would over-burden the court staffs.

75. In our view the provision allowing instalments is a valuable instrument for securing the payment of fines. In these days, when so many families budget from week to week, it is reasonable to require the offender to pay a monetary penalty on a weekly or monthly basis. We cannot see how this could be held to reduce the effectiveness of fining as a punishment; an obligation to find a sum regularly over a period may have a valuable disciplinary effect. We have recommended in paragraphs 50 to 53 that heavier fines should be imposed in future as alternatives to short sentences of imprisonment, and we regard it as a necessary corollary that these should in many cases be exacted by instalments. Admittedly this will produce more work for court staffs, which may in some areas have to be augmented. But we think that fears of this kind may have been exaggerated in the evidence we heard; some courts already succeed in operating machinery which handles periodical payments satisfactorily. And in our view the results to be achieved would justify the additional trouble involved.

76. We trust therefore that in future courts will make much greater use of this power. Section 43(1) of the 1954 Act provides that the court may order payment by instalments, but does not confer on the offender any right to apply

for such an order. We accept that the court must have complete freedom to decide whether in all the circumstances it is appropriate to allow payment by instalments; but we think it would be most desirable that the court should be required to inform the offender, as soon as the fine is imposed, that he may ask to be permitted to pay by instalments over a period. The court must already ask him whether he desires that time should be allowed for payment. We recommend that it should be placed under a statutory obligation also to ask him this other question.

Section 42(5) of the 1954 Act, as read with sections 40 and 43(1), authorises the court to alter the amounts of instalments and times at which they are due to be paid. We consider that courts should be willing to entertain applications for variations of this kind in their orders where the offender's circumstances have changed.

77. Courts of summary jurisdiction have another power in relation to fines which, according to our information, they very seldom use. They may place an offender aged 16 but not over 21 under supervision until his fine is paid: if they do, they must consider a report by the supervisor as to the conduct and means of the offender before allowing the offender to be imprisoned in default. (See section 42(3) of the 1954 Act.)

78. Supervision of this kind can obviously fulfil only a limited purpose. It would not serve, for example, as a satisfactory substitute for a probation order, since the supervisor is given little authority over the fined person, who, in the absence of any sanction, has no enforceable obligations towards him. Nevertheless we think that in suitable cases it may encourage and help the offender to avoid defaulting in payment.

In England supervision may be ordered whatever the age of the offender, and we see no good reason for limiting it in Scotland to the younger age-group: there may well be some older persons who would be kept out of prison if they were given steadying advice. We recognise, however, that in general supervision is more likely to be helpful for young offenders; and in this connection we are impressed by the advantages of another English provision. It is to the effect that, where an offender under 21 has been fined and given time to pay, he may not be sent to prison in default unless he has first been placed under supervision: an exception is made for any case in which the court is satisfied that it is undesirable or impracticable to place the offender under supervision, but in such a case the court must record the grounds on which it has been so satisfied. As has been noted in paragraph 73, we are perturbed about the number of young offenders who go to prison in default; and we recommend the adoption in Scotland of this further safeguard against their imprisonment.

79. If courts make more extensive use of the power to order supervision, as we think they should, they will no doubt wish to satisfy themselves before ordering it in any particular case that it is appropriate in all the circumstances. We should expect them to use the power most freely at the stage when there has been a failure to pay and, after a means enquiry, they have decided to give the offender a further opportunity. To enable this to be done we suggest that the amending legislation which we have proposed in paragraph 72 should include a provision authorising the court to impose a supervision order at this stage.

80. The obvious service to which the duty of supervision should be assigned is the probation service, which is accustomed to dealing with offenders on behalf of the courts. We understand that in England and Wales the service is used for this purpose; but that in Scotland fines supervision is not included in the duties of probation officers. Subject to the views of the Morison Committee (see paragraph 61) we recommend that the Scottish probation service should be authorised to undertake fines supervision at the direction of the courts.

81. There is, of course, a sanction other than imprisonment available for the enforcement of fines. When a court imposes a monetary penalty on a body corporate the fine, if unpaid, must be recovered by civil diligence (see section 25 of the 1954 Act); but in addition a court may order recovery by civil diligence in any case in which it may think this expedient (see section 50).

82. As has been noted in paragraph 7, the courts very seldom choose to make such an order; and we are satisfied that the extension of the practice would be undesirable.

When a fine is imposed on an offender his dependants may suffer hardship, and if he goes to prison in default this hardship may be increased. But if civil diligence is invoked against him the chances of his household being adversely affected are much greater. At a time when so many goods are bought on hire purchase the effect of civil diligence tends to be magnified: a fine enforced by arrestment of wages may make it impossible for instalments to be continued, and so may deprive the offender's family of a large part of its household effects. It is inevitable that the innocent dependants should frequently be put in jeopardy, but we do not think that anything should be done to multiply the number of hard cases.

There is the additional consideration that this form of enforcement involves further legal process, which absorbs time and effort. If it were adopted for any significant proportion of the fines imposed from day to day a heavy task would be given to the courts and their officers, and the machinery would be liable to be over-taxed.

83. We have recommended several steps which we think ought to be taken in order to reduce the numbers committed to prison for not paying fines. Most would require legislation, but a few could be taken under the law as it stands. If these recommendations are adopted we are confident that there will be a significant increase in the proportion of cases in which the fine is paid, and the court's intention when sentencing the offender is thus fulfilled.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Short sentences of imprisonment

84. We have concluded that too many short sentences of imprisonment are being passed (paragraph 28); and have made the following recommendations directed towards effecting a reduction in their number (those which would require legislation are asterisked):

(1) Courts should adjourn proceedings in more cases, before passing sentence, in order to obtain a report on the offender from a probation officer (paragraph 31).

* (2) The provisions of section 18, subsections (2) and (3), of the Criminal Justice (Scotland) Act, 1949, should apply to every person who, since he became 17 years of age, has not been previously convicted of, or found guilty of and put on probation for, an offence punishable by imprisonment (paragraph 35).

* (3) Sheriff Summary Courts should be empowered to impose up to one year's imprisonment for a second or subsequent conviction of an offence inferring dishonesty or personal violence (paragraph 40).

(4) The courts should make increasing use of probation orders, in place of short sentences of imprisonment, particularly for adult offenders (paragraph 42).

* (5) If necessary, courts should be expressly empowered to defer sentence for a discretionary period (paragraph 49).

* (6) In common law cases the maximum fine which may be imposed by a Burgh (Police) or Justice of the Peace Court should be increased to £50, and by the Sheriff Summary Court to £250 (paragraph 53).

* (7) Courts should be empowered, when sentencing an offender to a short term of imprisonment, to require him to undergo supervision for a period after his release, under sanction of recall to prison for the part of his sentence which has been remitted, or for a specified period not exceeding (say) two months, whichever is the longer period (paragraph 60).

(8) The Scottish probation service should be empowered to undertake the after-care of offenders who have served short terms of imprisonment (paragraph 61).

Short sentences in default of paying fines

85. We have also concluded that too many offenders are committed to prison for failing to pay fines (paragraph 66); and have made the following recommendations with a view to reducing their number:

(9) All courts ought to be prepared to reconsider at a later date the amount of any fine, or the time allowed for payment, or both (paragraph 69).

* (10) Provisions on the lines of sections 69 and 70 of the Magistrates' Courts Act, 1952, should be enacted, so that in most cases an alternative term of imprisonment will not be fixed when the fine is imposed, but a defaulter will have to be brought before the court for a means enquiry before it can commit him to prison (paragraph 72).

* (11) The court should be obliged to ask an offender, when it is fining him, whether he wishes to apply for permission to pay by instalments (paragraph 76).

(12) Courts should make greater use of their power to allow payment by instalments; and should be willing to entertain subsequent applications for alterations of the amounts and times (paragraph 76).

* (13) The court's power to place an offender under supervision during the period allowed him for payment of a fine should be extended to offenders of all ages; and a court should not be able to commit an offender under 21 to prison in default (except in special circumstances) unless he has been under supervision (paragraph 78).

(14) Courts should make greater use of the power to order supervision, particularly at the means enquiry stage (paragraph 79).

(15) The Scottish probation service should be empowered to undertake fines supervision (paragraph 80).

86. We should like to record our warm appreciation of the services of Mr. R. D. M. Calder, of the Scottish Home Department, who acted as our secretary. By his constant helpfulness he greatly lightened our task.

A. B. HUME (*Chairman*)
W. J. BRYDEN
D. GRAY
JOHN HILL
LOTHIAN
J. A. MACK
A. D. MACKELLAR
ALISON W. MACKENZIE
A. A. MATHESON
R. LEONARD SMALL

R. D. M. CALDER, *Secretary*
21*st January*, 1960

APPENDIX A

SOURCES OF EVIDENCE

* Mr. J. Allan, Police Judge, Dunfermline.

Mr. A. H. Anderson, Governor, Barlinnie Prison, Glasgow.

* The Rev. J. Russell Anderson, Chaplain, Barlinnie Prison, Glasgow, and Chairman, The Discharged Prisoners' Aid Society, Glasgow.

The Chief Constables' (Scotland) Association.

* The Discharged Prisoners' Aid Society, Perth.

† Mrs. Jane Dowie, Earlston, Berwickshire.

† Sir David Edwards, M.A., LL.B., Senior Judge, Special Court of Cyprus.

† Mr. William Gordon, Brightons, Falkirk.

* Miss C. G. Haldane, J.P., Church of Scotland Welfare Worker, Edinburgh.

* Major D. C. Heron Watson, Governor, Saughton Prison, Edinburgh.

† Home Office.

* Ministry of Labour and National Service.

* Mr. J. F. Langmuir, B.L., Stipendiary Magistrate, Glasgow.

* Mr. W. W. Mackay, Clerk to Edinburgh Burgh Court.

* Constable Phin, Glasgow Constabulary.

The National Association of Probation Officers (Scottish Branch).

† Scottish Home Department.

* The Rev. Hamish Sharp, Chaplain, Perth Prison.

The Association of Sheriffs Substitute.

* The Rev. John Wood, Chaplain, Edinburgh Prison.

†written evidence only.
*oral evidence only.

[Paragraph 10]

APPENDIX C

IMPRISONMENT IN DEFAULT OF PAYMENT OF FINES IN SCOTLAND

YEAR	No. of fines imposed	No. resulting in imprisonment	%	No. resulting in imprisonment of persons under 21
1934	60,252	9,111	15·0	
1935	71,646	8,581	12·0	
1936	81,405	7,965	9·8	
1937	86,896	8,342	9·6	
1938	87,506	7,533	8·6	
1939	83,329	6,795	8·2	
1940	93,421	4,867	5·2	
1941	91,331	3,110	3·4	
1942	78,914	2,359	3·0	
1943	71,764	2,900	4·0	
1944	67,305	2,487	3·7	
1945	55,996	2,327	4·2	
1946	64,109	2,129	3·3	
1947	69,367	2,276	3·3	
1948	69,318	2,250	3·2	
1949	68,455	2,554	3·7	
1950	71,621	2,721	3·8	173*
1951	74,603	2,821	3·8	138
1952	78,171	3,411	4·4	249
1953	81,244	3,710	4·6	261
1954	84,266	3,574	4·2	229
1955	89,974	3,099	3·4	254
1956	97,849	3,191	3·2	253
1957	100,639	3,788	3·8	349
1958	111,027	4,136	3·7	401

*Figures for earlier years not available

APPENDIX D

Comparison of Methods of Disposal—1957

Scotland		England and Wales	
Disposal	Percentage of total disposals	Disposal	Percentage of total disposals
Forfeited Pledges	6·1	Fines	84·8
Fines	73·3		
Short-term Imprisonment (six months or less)	4·5	Short-term Imprisonment (six months or less)	2·0
Long-term Imprisonment	0·5	Long-term Imprisonment	1·0
Borstal, Corrective Training and Preventive Detention	0·2	Borstal, Corrective Training and Preventive Detention	0·4
Fit Persons and Approved School Orders	0·4	Fit Persons and Approved School Orders	0·4
Probation	3·0	Probation	4·0
Absolute Discharge	1·8	Absolute Discharge	2·4
Admonition	9·7	Conditional Discharge	3·9
Caution	0·2	Recognizances	0·6
Other	0·3	Other	0·5

APPENDIX E

Extract from "The Scottish Prison System", a report by the Scottish Advisory Council on the Treatment and Rehabilitation of Offenders (1949).

"102. We wish to be equally emphatic in expressing our opinion about the ineffectiveness of short-term prison sentences. We are thinking of sentences not exceeding six months in length. Under existing provisions a convicted prisoner may earn by good conduct a remission of his sentence for a period of up to one third of the length imposed, so long as the sentence exceeds thirty days. A six months' sentence accordingly carries a remission period of two months, thus reducing the time spent in prison to four months. We have been impressed by the unanimous opinion given to us by prison governors and other persons, whose work brings them into close touch with prisoners, that the short-term sentence is harmful to the offender and a waste of public money. Frequent and brief appearances in prison only result in a stigma which it is very difficult, if not impossible, for persons of weak character to overcome .....
We hope that such short sentences will in future only be imposed when the Court is fully satisfied that no other method of dealing with the case is possible in the interests of the community and of the offender."

* * * * * * * * *

"168. (i) When a Court has under consideration the time to be allowed for payment of a fine, it should, in addition to having regard to the representations made by the offender (in accordance with its obligations under Section 1(2) of the Criminal Justice Administration Act of 1914), also receive and consider in all but trivial cases a report from a suitable person such as the probation officer.

(ii) The provisions of Section 1(3) of the Criminal Justice Administration Act of 1914 (which authorises a Court, if it thinks fit, to place under supervision a person of not less than 16 nor more than 21 years of age who has been ordered to pay a fine and given time in which to pay) should be made mandatory for all persons under the age of 21 years; and that discretionary power should be given to Courts to place under supervision offenders who are 21 years of age or over who have had a fine imposed on them and given time in which to pay.
.....

(x) .....We are of opinion that a habitual drunkard, whether or not considered dangerous to himself or herself or to others, should be placed in a separate institution where he or she should receive psychiatric treatment and that the period of detention should be of sufficient length—not less than six months—to give such treatment a chance to be effective, and we recommend that such provision should be made."

Extract from "Alternatives to Short Terms of Imprisonment", a report by the Advisory Council on the Treatment of Offenders (1957).

"6. The number of receptions is large and if it were possible for a substantial proportion of them to be dealt with differently, there would undoubtedly be a reduction in the administrative burden that receptions put on prison staffs. But the effect on the overall prison population and thus on accommodation and overcrowding would be less substantial. In 1954 the daily average population of prisons was 19,065. The daily average population of prisoners serving a sentence of less than one month was 187, and the equivalent figures for sentences of less than three months and less than six months were 804 and 1,904 respectively."

"7. But however useful a reduction in short-term prisoners would be for prison administration, that is not the main ground on which the need has been put to us for suitable alternatives to short terms of imprisonment. The argument is rather that in a substantial number of cases a short term of imprisonment does no good and may do some harm. These are the cases with which our enquiry is concerned. None of our witnesses has denied that there are such cases and that there is a need for suitable alternatives for them. This is not, however, the same as saying that alternatives should be found for all short-term sentences. In our view there is nothing to justify such sweeping condemnation. The short sentence has a definite and necessary place in our criminal law. There are many cases in which a sentence

of imprisonment is inevitable, but the nature and circumstances of the offence do not require a long sentence. There is thus nothing inherently wrong in a short sentence being the only sentence of imprisonment open to magistrates' courts, the courts which deal with over 95% of criminal charges. Nor is there any reason why a short sentence should not be socially and penally useful in certain circumstances."

"8. We agree that there nevertheless remain the short-term sentences for which some alternative is desirable. Exactly what this group comprises and how large it is, is difficult to judge. There are, perhaps, two distinct categories within it. First there is the prisoner whose offence suggests that *prima facie* prison is unsuitable and useless: the fine defaulter, the chronic alcoholic, the woman convicted of child neglect, the husband who has defaulted on a maintenance order. These are all recognisable groups and the problem is how to deal with the group rather than with individual prisoners. The second is the prisoner convicted of a criminal offence such as larceny, breaking or assault and given without the option of a fine a sentence of imprisonment which, it is said, will neither train nor deter but possibly contaminate him and for which there does not at present exist a suitable or adequate alternative. This is a much more elusive category. It would need the most extensive research to form even a tentative estimate of the numbers it contains. We have, however, formed the opinion that it exists in sufficient numbers to constitute a problem. It can be expected to consist principally of first offenders and offenders who have not been in prison before, and in support of our opinion we point to the 1,297 first offenders sentenced to imprisonment without the option of a fine for six months or less for non-indictable offences and the further 1,309 who had one or more previous proved offences but had not been sentenced to imprisonment before (see Appendix A)."

"9. These then are the categories we have had in mind when examining, as our terms of reference require us to, the possibility of devising suitable alternatives to short terms of imprisonment. We have not, however, felt precluded from considering suggestions which, while not in terms alternatives to imprisonment, are designed to help to reserve imprisonment for cases where it is unavoidable. This type of suggestion is intended to reduce the number of useless prison sentences, which is the object of our inquiry."

* * * * * * * * *

"61. Our recommendations may be summarised as follows:

(*a*) An experimental attendance centre for male 17–21 year olds should be established by the Prison Commissioners. After it has become established further centres for the same age group should be considered. The present statutory limit of 12 hours' attendance should be increased for the 17–21 year olds when the opportunity arises. The suggestion of attendance centres for adults can be reconsidered in the light of the experience gained at these centres.

(*b*) We are opposed to offenders being required as a punishment to report periodically to a police station.

(*c*) Courts should consider imposing heavier fines as an alternative to imprisonment. Maximum fines, including the one for drunkenness, should be reviewed as the opportunity arises.

(*d*) The question of the suspended sentence was dealt with by the Council in 1951 and we make no further recommendation.

(*e*) We cannot recommend a revival of the Inebriates Acts. In suitable cases of alcoholism the courts should consider—

(i) probation with a requirement for residential treatment;

(ii) ordering the offender to enter into a recognizance with or without sureties to be of good behaviour.

(*f*) Consideration of the possible alternatives to imprisonment in child neglect cases should be deferred until after the Ingleby Committee have reported.

(*g*) The courts should be enabled to attach the wages of a person who has defaulted on a maintenance or similar order.

(*h*) Remand centres should be set up as soon as possible.

(*i*) Section 17 of the Criminal Justice Act, 1948, should be extended to adult first offenders.

(*j*) The courts should be reminded of their power to order supervision pending payment of a fine.

(*k*) The courts should be reminded of their power to remand for enquiry."

APPENDIX F

Report by the Research Unit

A comparison between the effectiveness of short-term imprisonment and other penalties for first offenders in Scotland.

The object of the study was to attempt to assess the relative effectiveness of different penalties, particularly imprisonment and fines as used on Scottish first offenders.

A total of 3,163 male offenders aged 17 or over first convicted in Scotland in 1947 and recorded in the Glasgow Criminal Records were studied. Information concerning the type of court, the offence, the penalty and the age of offender was collected. Data on re-convictions extended to the present time. The material was analysed to isolate the factors which had a bearing on re-conviction so that allowance could be made for these when studying the re-conviction rates of offenders given different penalties.

Courts

Although information was collected for six different types of court, the results for the High Court, sheriff and jury courts, J.P. courts and military courts were not analysed as fully as the remainder, since the number of offenders convicted in these courts was small.

Method of analysis

The method adopted follows that set out in an earlier note entitled ' Analysis of a sample of first offences recorded in the Glasgow Criminal Record Office '. Briefly, this consists of standardising the penalties according to the offender's risk of re-conviction based on his age and the type of offence he committed, so that the actual re-conviction figures for any penalty can be compared with the results which would be expected from the nature of the offenders. This method has been applied to the general use of different penalties by all the courts combined and also to individual courts.

Results

The first four Tables show the nature of the offenders tried by different courts and the penalties they receive in order to see how far direct comparison between the different penalties given is possible and how far the re-conviction rates for different penalties may be a function of the sentencing practice of the court or of the different characteristics of the offenders convicted.

Table I

Penalties used by Different Courts

	Imprisonment			Fine	Discharge	Other penalty	All penalties	
	2–3m. %	3–6m. %	6+m. %	%	%	%	Number	%
High Court	—	4·0	79·0	—	4·0	13·0	23	100
Sheriff and Jury Court	25·0	12·0	23·0	30·0	8·0	3·0	260	100
Sheriff Summary Court	25·0	7·0	5·0	53·0	7·0	3·0	1,929	100
Burgh or Police Court	5·0	—	—	80·0	12·0	2·0	907	100
J.P. Court	—	—	—	91·0	9·0	—	35	100
Military Court	44·0	—	22·0	—	—	33·0	9	100
All Courts	17·8	5·7	5·8	58·5	8·9	3·1	3,153	100

Table II

PERCENTAGE AGE DISTRIBUTION OF FIRST OFFENDERS CONVICTED AT DIFFERENT COURTS

	17–20 %	21–29 %	30–39 %	40–49 %	50+ %	All ages
High Court . .	9·0	35·0	26·0	17·0	13·0	100
Sheriff and Jury Court .	19·0	43·0	23·0	10·0	3·0	100 (2 ages not known)
Sheriff Summary Court	19·0	38·0	23·0	14·0	6·0	100 (5 ages not known)
Burgh or Police Court .	16·0	33·0	26·0	17·0	8·0	100 (3 ages not known)
J.P. Court . . .	20·0	43·0	20·0	14·0	—	100 (1 age not known)
Military Court . .	33·0	35·0	11·0	—	—	100
All Courts . . .	18·3	36·8	24·2	14·4	5·9	100 (0·3%)

Tahles I and II show that the lower courts differed from the higher courts mainly in the greater proportion of fines and smaller amount of imprisonment given. There was little difference between the civilian courts in respect of the age of offenders they dealt with.

Table III

PERCENTAGE DISTRIBUTION OF OFFENCES OF OFFENDERS SENTENCED AT VARIOUS COURTS

	Theft %	*Aggravated Theft %	Housebreaking (incl. O.L.P.) %	Fraud or F.P. %	Sex offences %	Violence %	Other offences %	All offences %
High Court .	—	17	17	9	22	35	—	100
Sheriff and Jury Courts . .	20	16	34	11	8	7	3	100
Sheriff Summary Courts . .	19	26	28	12	8	4	5	100
Burgh Courts .	46	34	1	8	5	3	4	100
All Courts .	27	27	20	11	7	4	5	100

* Includes theft of motor vehicle, theft hy servant, etc.

The Sheriff and Jury Courts and the Sheriff Summary Courts dealt with ahout the same proportions of the various offences hut the offenders hefore the Burgh Courts were convicted very largely (80%) of theft; househreaking is not dealt with at these courts.

Tables IV and *V* show the penalties given to offenders of different ages and the offences committed by them.

Table IV

DISTRIBUTION OF PENALTIES GIVEN TO OFFENDERS OF DIFFERENT AGES

	— 3m. %	3–6m. %	6+m. %	Fine %	Discharge %	Other penalty %	All penalties Number	All penalties %
17–20 .	17	3	2	49	17	11	578	100
21–29 .	20	5	5	60	8	2	1,164	100
30–39 .	16	8	7	62	6	1	766	100
40–49 .	15	8	9	60	8	—	457	100
50+ . .	20	7	13	54	2	4	187	100
All ages† .	18	6	6	59	9	3	3,163	100

† Includes 11 cases where the age was not recorded.

Table V

ANALYSIS OF PENALTIES GIVEN FOR DIFFERENT OFFENCES

	Imprisonment			Fines	Discharges	Other penalties	All penalties
	Under 3 months %	Under 6 months %	6 months or more %	%	%	%	%
Theft . .	10	2	2	72	11	3	100
Aggravated theft	12	4	4	70	7	3	100
Other offences .	13	3	1	70	11	3	100
Housebreaking .	30	8	5	41	9	6	100
Fraud . .	21	12	13	45	8	1	100
Sex offences .	31	12	10	40	6	3	100
Violence . .	26	11	9	47	5	2	100

There was a tendency to sentence older offenders to imprisonment more often than younger offenders and the sentences given were also longer. Absolute discharge, admonitions or deferred sentences (all included under the heading ' Discharges '), decreased as the offender's age increased.

Imprisonment was used commonly for housebreaking and relatively infrequently for theft for which offence the most usual penalty was a fine.

As a result of these differences between the type of offender given particular penalties or sentenced by particular courts, it is evident that no direct comparison of the re-conviction rates for different penalties or courts would throw light on the relative effectiveness, for comparable offenders, of the different penalties.

Factors affecting re-conviction rates

The re-conviction rates for all offenders according to the penalty given and age of offender are set out in Table VI.

Table VI

PERCENTAGE RE-CONVICTION BY AGE AND PENALTY—ALL COURTS

	Imprisonment			Fines	Discharge, etc.	Other penalties	All penalties
	Less than 3 months %	Less than 6 months %	6 months and over %	%	%	%	%
17–20 .	35·5	56·3	45·5	33·2	36·5	41·9	35·8
21–29 .	35·8	35·1	28·2	26·6	31·9	39·2	29·8
30–39 .	25·8	25·4	20·0	21·4	20·8	28·6	22·4
40–49 .	16·2	11·4	7·1	15·2	11·4	—	14·0
50+ .	13·5	21·4	12·5	8·9	—	—	10·8
All ages .	29·9	28·2	20·4	23·5	28·3	36·2	25·5

The age of offender obviously has considerable influence on the proportion of re-convictions. The various penalties also have different re-conviction rates, but these differ to some extent according to the age distribution of the offenders to whom the penalty is given.

If we standardise the results by applying the over-all re-conviction rates for each age to offenders given particular penalties, and then add the results, we eliminate the effect of differences in age composition, and we can compare the actual numbers of re-convictions for any penalty with the numbers which would be expected from the age composition. The actual re-convictions expressed as a percentage of the expected figure are as follows:—

Imprisonment			Fines	Discharges	Other penalties	All penalties
Under 3 months %	3 to less than 6 months %	6 months and over %	%	%	%	%
114·0	121·2	92·8	93·2	98·8	118·8	100·0

Offenders fined or given six months' or longer imprisonment have lower re-conviction rates than those given other penalties. Discharges result in about the expected number of re-convictions, but short-term imprisonment and 'other penalties' (mainly borstal training in the 17–20 group) have worse re-conviction rates than expected on the age basis. This pattern is fairly consistent for all ages of offender.

The re-convictions, again expressed as a percentage of the expected re-conviction figure are shown below separately for each court and penalty for all ages combined.

ACTUAL RE-CONVICTIONS AS A PERCENTAGE OF EXPECTED RE-CONVICTIONS BY COURT AND PENALTY

	Imprisonment			Fines	Discharges	Other penalties	All penalties
	Under 3 months	3 to less than 6 months	6 months and over				
	%	%	%	%	%	%	%
High Court	—	—	(95·0)	—	—	—	—
Sheriff and Jury Court	138·0	(53·0)	96·0	90·0	(123·0)	(88·0)	103·2
Sheriff Summary Court	105·0	136·0	91·0	94·0	103·0	118·0	101·2
Burgh or Police Court	161·0	(167·0)	—	92·0	87·0	132·0	96·3
J.P. Court	—	—	—	69·0	—	—	81·2
All courts	114·0	121·2	92·8	93·2	98·8	118·8	100·0

(*Note:* Figures in brackets have fewer than 10 re-convictions in the denominator.)

The numbers are small in some of the sub-groups, but when all penalties are combined the re-conviction rates are worse than expected in the sheriff and jury and sheriff summary courts and hetter in the burgh courts. There are several possihle explanations—one is that the worst material is sent to the higher courts and therefore a higher re-conviction rate is to be expected in these courts. However, the comparisons are within the same penalty groups (so that if these offenders are regarded as more serious they are nevertheless given the same penalties as offenders in the lower courts). Another explanation is that the higher courts more frequently use the less successful penalties (particularly short-term imprisonment), whereas the lower courts more often use successful penalties such as fines. If the proportions of the more successful and less successful penalties are equalised for the courts the results would be:—103·0 times the expected re-conviction rate for the Sheriff and Jury Courts, 102·8 for the Sheriff Summary Courts, and 102·4 for the Burgh Courts respectively. The difference between the courts can thus be explained on the hasis of the frequency of the different penalties given hy them.

The offences dealt with by the different courts vary to some extent as shown in Table III, but these differences are only small between the Sheriff and Jury Courts and Sheriff Summary Courts.

Effect of type of offences

So far the type of offence has not been analysed except to show that the offences of offenders convicted at the Sheriff and Jury Courts are very similar to those of offenders convicted at the Sheriff Summary Courts, whereas the Burgh Courts do not deal with househreaking offences hut include about 80% theft cases. Younger offenders tend to commit a large proportion of the housebreaking offences and violence, and older offenders, theft or fraud.

Two main groups of offences tend to be dealt with rather differently hy the courts; housebreaking, fraud, sex and violence offences tend to be treated hy imprisonment about as often as by fines, whereas theft and other offences (malicious mischief, etc.) result in fines in ahout 70% of cases.

The percentage re-conviction rates for the different offence groups are shown helow in Table VII.

Table VII

RE-CONVICTION RATES FOR DIFFERENT OFFENCES ACCORDING TO AGE OF OFFENDER

	17–20	21–29	30–39	40–49	50+	All ages
Theft	31·1	31·8	24·2	20·5	8·0	28·7
Aggravated theft	26·2	19·7	14·7	9·3	8·2	16·8
Housebreaking (and O.L.P.)	41·5	37·2	34·7	26·1	—	37·9
Fraud	15·8	35·9	23·8	8·7	21·9	23·5
Sex	26·7	14·1	17·2	13·5	12·5	15·5
Violence	(66·7)	31·5	27·8	18·2	—	33·0
Other offences	23·1	32·2	27·3	11·1	(20·0)	25·5
All offences	35·9	29·8	22·3	33·7	10·8	25·7

Over-all re-conviction figures for the separate offences of theft of motor vehicles, theft by O.L.P. and theft by servant, etc., were also calculated and the figures were 25·5%, 42·9% and 10·1% respectively. Theft by servant accounted for 56% of the aggravated thefts and it is therefore largely responsible for the low re-conviction rate of the group. Reset had a re-conviction rate of 22·1%.

The re-conviction rates for different offences vary according to age, but housebreaking rates are highest at all ages, sex offences and aggravated theft have low rates and the remainder are intermediate. All thefts combined tend to have a low re-conviction (22·3%) rate, and, since this group and housebreaking offences between them make up about three-quarters of all offences and the remaining offences vary rather spasmodically with age, the latter have been combined and the over-all re-conviction rates for these three groups of offences within the separate age groups have been used to standardise the results in comparing penalties.

The actual and expected numbers of re-convictions in each age and penalty group are shown below in Table VIII for all courts combined, and the actual numbers as a percentage of the expected numbers are shown in the last line for all ages of offenders.

Table VIII

ACTUAL COMPARED WITH EXPECTED RE-CONVICTIONS
(Results summarised by age and offence group)

	Imprisonment						Fines		Discharges		Other penalties	
	Under 3 months		3 to under 6 months		6 months or over							
	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.	Act.	Exp.
17–20	36	39·1	9	6·2	4	3·4	94	95·9	33	34·2	24	20·7
21–29	86	72·8	19	17·5	15	15·2	184	195·4	28	25·4	7	4·9
30–39	31	30·4	15	15·0	8	10·5	101	104·6	11	11·4	2	2·1
40–49	10	10·9	4	4·9	2	5·5	41	41·2	4	2·6	—	2·3
50+	5	3·8	3	1·4	3	2·5	7	9·4	—	0·3	—	0·6
All ages	168	157·0	50	45·0	32	37·2	427	446·5	76	73·9	33	30·6
Actual as percentage of expected re-convictions	107·0		111·1		86·0		95·6		102·8		107·8	

The agreement between the actual numbers of re-convictions and those expected on the basis of the age of offender and type of offence committed is very close, showing that for all practical purposes these two factors account for the different re-conviction percentage figures given in Table VI. These ranged from 56% to 7% thus presenting a considerable variation to be explained.

Though the individual differences between the actual re-convictions for the different penalties and the numbers expected from the age composition and type of offence are small, on the whole long-term imprisonment and fines result in fewer re-convictions than would be expected, discharges are again near the expected figure and short-term imprisonment and other penalties somewhat worse than expected.

It can be seen from Table VIII that the imprisonment and other penalty groups are more favourable than they appeared when the results were standardised, by ages alone, but that fines and discharges are less favourable; this is because these latter penalties were used for the less recidivist offences and imprisonment was used for the more recidivist ones. The difference between the standardisations are not sufficient to change the general pattern of the relative effectiveness of the different penalties.

Fines were analysed into three groups; under £1, £1 to £5, and over £5, and the results standardised as above were as follows:

Under £1	£1 *to* £5	*Over* £5
113·7	97·4	88·7

The very light fines resulted in rather more re-conviction than expected and the heaviest fines appeared to be most effective. The poor result for fines of under £1 is seen from the following Table to be due mainly to their use on offenders convicted of theft.

Table IX

ACTUAL AND EXPECTED RE-CONVICTIONS OF OFFENDERS GIVEN FINES OF VARYING AMOUNTS
(based on age and offence standardisation)

	Less than £1		£1 to £5		Over £5		All Fines	
	Expected	Actual	Expected	Actual	Expected	Actual	Expected	Actual
17–20 Theft	8·7	9	35·3	35	9·0	8	53·0	52
Other offences	3·0	2	30·0	29	8·4	11	41·4	42
21–29 Theft	15·0	17	63·8	54	22·8	23	101·6	94
Other offences	6·3	9	54·9	62	30·0	18	91·2	89
30–39 Theft	9·0	10	36·4	31	17·2	13	62·6	54
Other offences	1·0	1	21·2	25	17·9	21	40·1	47
40+ Theft	7·1	10	20·6	18	7·3	5	35·0	33
Other offences	0·9	—	8·4	9	6·9	7	16·2	16
All ages								
Theft	39·8	46	156·1	138	56·3	49	252·2	233
Other offences	11·2	12	114·5	125	63·2	57	188·9	194
All offences	51·0	58	270·6	263	119·5	106	441·1	427

Comments on results

When studying the effectiveness of different penalties the main difficulty is to ensure that the results are comparable when there are a number of factors which may vary independently or together. From other studies the chief influence on recidivism among first offenders has been shown to be age at which the first offence was committed. The present results likewise show a steady increase in the proportion of re-convictions as the age of committing the first offence increases. This applies to some extent whatever the court or the penalty given. The next important factor is the nature of the offence. Housebreaking is the one offence which consistently results in higher recidivism than other offences whatever the age of offender. Theft has a low re-conviction rate and the remaining offences have rather variable rates but in any case they contribute only a relatively small part of the offences committed by

first offenders, and they have therefore been taken together. The over-all re-conviction rates for the three major offence groups, theft, housebreaking and 'other offences' have been applied within each age group; the expected figures for each penalty can then be compared with the actual figures so enabling a comparison of penalties to be made which is independent of the main determinants, age and offence type. There may be other characteristics of the offender which affect his likelihood of re-conviction, e.g. his social and economic background, and these have not been taken into account. If these differ for offenders given different sentences any difference in the effectiveness of treatments may be due to these factors, but since the majority of offenders probably come from similar social and economic backgrounds these factors are likely to have little weight.

Summary

The chief results of this study may be summarised as follows:

(1) There was very little difference between the ages of offenders convicted at the Sheriff and Jury Courts, Sheriff Summary Courts or the Burgh Courts.

(2) The offences dealt with by the Sheriff Summary and Sheriff and Jury Courts were very similar but the Burgh Courts were used mainly for thefts and do not deal with housebreaking.

(3) Despite (1) and (2) above the penalties given by the Sheriff and Jury Courts and Sheriff Summary Courts differed considerably. The Sheriff and Jury Courts made use of their powers to impose longer sentences of imprisonment and used fines to a much less extent than the Summary Courts.

(4) Apart from discharges and 'other penalties' (mainly borstal training) given to the 17–20 group of offenders there were only slight differences in the proportions of the various penalties given to different ages of offender.

(5) On standardising the results by age of offender, fines and sentences of imprisonment of six months or over have the lowest re-conviction rates, discharges have about the expected rate and short-term imprisonment and other penalties have the highest re-conviction rates.

(6) Different offences have different expectation of re-conviction and this applies independently of the age or penalty group; this factor also should be standardised when making comparisons between penalties.

When the re-conviction rates for different penalties are standardised by age and the nature of the offences committed, the results are very little different from those resulting from the age standardisation alone. Fines and long-term imprisonment still give results slightly better than expectation and short-term imprisonment and 'other' penalties worse results.

(7) When the fines are broken down in terms of under £1, £1 to under £5 and over £5 the large fines have the lowest re-conviction rates and the small fines actually have higher rates than expected. Small fines are used chiefly for offenders over age 21 convicted of theft, and for this group they do not appear to be very satisfactory compared with other penalties.

(8) There was little consistent difference between the re-conviction rates of the Sheriff and Jury Courts, the Sheriff Summary Courts or the Burgh Courts when compared within particular penalties, but for all penalties combined, the actual re-convictions compared with expected re-convictions were best for the Burgh Courts, next for the Sheriff Summary Courts and worst for the Sheriff and Jury Courts. This could be accounted for by the fact that the Burgh Courts made most use of fines, the successful penalty, and the Sheriff and Jury Court least use, and conversely for the other less successful penalties.

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PERSONS RECEIVED INTO PRISON IN 1958 WITH SENTENCES OF SIX MONTHS OR LESS

Subdivided by record, sex, age, sentencing court and offence

	Total number of persons sentenced	With No Previous Prison Offences								With Previous Prison Offences, but No Previous Sentence of Imprisonment								With Previous Sentence of Imprisonment		Total		Period of Imprisonment					
		Imprisonment in default of payment of fine				Sentenced to imprisonment without option		Total		Imprisonment in default of payment of fine				Sentenced to imprisonment without option		Total						Up to 14 days		15 to 21 days		22 days up to 3 months	
		Allowed time to pay		Not allowed time to pay						Allowed time to pay		Not allowed time to pay															
	(1)	M (2)	F (3)	M (4)	F (5)	M (6)	F (7)	M (8)	F (9)	M (10)	F (11)	M (12)	F (13)	M (14)	F (15)	M (16)	F (17)	M (18)	F (19)	M (20)	F (21)	M (22)	F (23)	M (24)	F (25)	M (26)	F (27)
All crimes and offences	11,484	227	29	193	31	1,011	73	1,436	133	314	61	307	100	1,546	77	2,267	316	6,482	466	10,353	915	5,930	610	2,463	140	2,213	59
Crimes	2,353	114	15	61	8	693	55	869	78	181	8	61	8	1,305	48	1,295	61	3,858	84	3,326	287	1,993	97	1,207	69	1,126	6
Offences	9,131	113	14	137	23	318	20	567	57	329	56	246	92	497	29	1,868	157	3,604	378	3,039	593	3,737	513	956	71	326	8
CLASS I CRIMES AGAINST THE PERSON																											
Total	987	19	3	7	—	172	19	201	21	23	—	11	—	159	6	218	6	435	8	852	35	340	9	203	16	230	16
Attempts to Murder etc.	3	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	2	—	2	—	—	—	1	—	1	—
Culpable Homicide	3	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	3	—	3	—	—	—	—	—	2	—
Assaults	523	16	1	6	—	60	1	76	2	19	—	16	—	133	—	134	2	313	3	323	3	229	1	150	16	136	3
Cruel and Unnatural Treatment of Children	199	6	1	—	—	27	17	33	18	—	—	—	—	23	6	33	8	71	4	121	28	53	8	43	14	25	6
Incest	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—
Unnatural Crimes, including sodomy	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	—	—	—	—	—	—
Rape and other offences against Females	148	3	—	—	—	74	—	78	—	—	—	—	—	31	—	31	—	49	1	147	1	31	—	31	—	65	1
Bigamy	22	—	—	1	—	10	1	11	1	—	—	—	—	4	—	4	—	6	—	31	1	—	—	2	1	13	—
Other Crimes against the Person	33	1	—	—	—	2	—	3	—	4	—	1	—	8	—	11	—	19	—	33	1	16	—	16	—	7	—
CLASS II CRIMES AGAINST PROPERTY WITH VIOLENCE																											
Total	2,151	49	—	11	—	201	3	261	3	75	3	6	—	403	3	576	7	1,293	8	2,134	17	645	7	525	5	204	5
Housebreaking, etc.	2,125	49	—	11	—	188	2	248	2	75	3	6	—	401	3	565	7	1,286	7	2,107	16	644	7	522	5	205	4
Robbery, and Assaults with intent, etc.	22	1	—	—	—	7	1	7	1	—	—	—	—	1	—	8	—	7	1	26	1	1	—	3	—	15	1
Other Crimes against Property with Violence	4	—	—	—	—	6	—	6	—	—	—	—	—	1	—	3	—	—	—	1	—	—	—	—	—	1	—
CLASS III CRIMES AGAINST PROPERTY WITHOUT VIOLENCE																											
Total	2,389	45	12	37	8	299	30	381	50	56	9	43	8	358	37	485	48	1,351	59	2,222	196	857	78	625	44	713	44
Theft	1,772	34	9	31	5	163	16	228	22	46	2	27	6	261	25	334	33	1,077	59	1,659	114	680	51	458	32	313	31
Reset	131	4	1	3	1	23	1	30	3	8	1	1	—	24	3	33	3	95	—	124	6	39	4	43	1	42	1
Breach of Trust and Embezzlement	55	1	—	—	—	31	7	31	7	1	—	3	—	16	—	19	—	20	1	31	8	21	3	7	1	41	4
Fraud	311	4	2	4	1	36	12	44	18	8	—	13	2	33	16	56	12	179	8	273	38	104	20	79	10	38	8
Post Office Offences	19	1	—	—	—	16	—	17	—	—	—	—	—	2	—	2	—	8	—	19	—	3	—	13	—	3	—
Other Crimes against Property without Violence	56	1	—	—	—	10	—	11	—	3	—	—	—	22	—	24	—	21	—	56	—	31	—	13	—	12	—
CLASS IV MALICIOUS INJURIES TO PROPERTY																											
Total	33	1	—	4	—	4	1	9	1	1	—	1	—	6	—	8	—	16	1	53	3	20	1	18	1	6	—
Fire-raising	2	—	—	—	—	1	—	1	—	—	—	—	—	1	—	1	—	3	—	3	—	—	—	1	—	2	—
Malicious Mischief	52	1	—	4	—	3	1	8	1	1	—	1	—	5	—	7	—	13	1	50	3	20	1	17	1	4	—
CLASS V FORGERY AND CRIMES AGAINST CURRENCY																											
Total	17	1	—	—	—	—	1	1	1	—	—	—	—	4	—	4	—	9	2	14	3	5	1	8	1	4	1
Forgery and Uttering	14	1	—	—	—	—	—	1	—	—	—	—	—	3	—	3	—	8	2	11	3	4	1	6	1	3	1
Coining and other Crimes against Currency	3	—	—	—	—	—	1	—	1	—	—	—	—	1	—	1	—	1	—	3	—	1	—	2	—	1	—
CLASS VI OTHER CRIMES NOT INCLUDED ABOVE																											
Total	33	—	1	2	—	13	2	14	3	1	—	2	—	6	—	9	—	26	1	51	4	27	1	12	3	12	1
Perjury, Bribery etc.	15	—	1	—	—	3	2	3	3	—	—	—	—	3	—	3	—	11	1	11	4	2	—	1	3	6	1
Indecent Exposure	37	—	—	—	—	9	—	9	—	1	—	1	—	4	—	7	—	21	—	37	—	23	—	10	—	3	—
Other Crimes	3	—	—	2	—	1	—	2	—	—	—	—	—	—	—	—	—	1	—	3	—	—	—	1	—	3	—

(1)	Total number of persons sentenced	With No Previous Proved Offences								With Previous Proved Offences, but No Previous Sentence of Imprisonment								With Previous Sentence of Imprisonment		Total		Period of Imprisonment					
		Imprisonment in default of payment of fine				Sentenced to Imprisonment without option		Total		Imprisonment in default of payment of fine				Sentenced to Imprisonment without option		Total						Up to 21 days		22 to 61 days		62 days up to 6 months	
		Allowed time to pay		Not allowed time to pay						Allowed time to pay		Not allowed time to pay															
		M (2)	F (3)	M (4)	F (5)	M (6)	F (7)	M (8)	F (9)	M (10)	F (11)	M (12)	F (13)	M (14)	F (15)	M (16)	F (17)	M (18)	F (19)	M (20)	F (21)	M (22)	F (23)	M (24)	F (25)	M (26)	F (27)
Class VII. Miscellaneous Offences																											
Total	2,631	112	14	127	23	218	20	567	57	280	34	242	92	497	29	1,088	127	3,404	378	2,029	592	3,757	212	956	71	226	8
Alkali Acts, Offences against	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Breach of the Peace, etc.	2,378	45	16	69	12	83	2	197	37	171	18	111	32	248	26	530	68	1,589	164	2,316	239	1,750	216	456	38	110	5
Brothel keeping	2	—	—	—	—	4	1	4	1	—	—	—	—	—	—	1	—	—	2	5	3	—	—	1	—	5	2
Children and Young Persons (Scotland) Acts, Offences against (not provided for in separate headings)	47	1	—	2	—	6	2	11	2	2	—	—	—	5	—	7	—	27	—	45	2	22	2	11	—	12	—
Civil Imprisonment Act, 1882, Offences against	23	4	—	2	—	5	—	9	—	3	—	—	—	—	—	3	—	11	—	23	—	16	—	7	—	—	—
Extradition Acts, Offences against	63	12	—	—	—	—	—	12	2	14	4	—	—	1	—	19	4	28	2	55	6	34	8	13	—	—	—
Explosives, etc. Offences in relation to	3	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	2	—	2	—	—	—	1	—	1	—
Fishery Laws, Offences against	28	2	—	—	—	2	—	4	—	1	—	—	—	10	—	11	—	23	—	38	—	8	—	19	—	11	—
Harbour Acts, Offences against	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	—	—	—	—	—	—
Intoxicating Liquor Laws Offences against																											
Drunkenness	1 248	1	—	38	7	1	—	39	7	35	10	96	55	4	2	139	67	343	108	1,016	232	832	218	84	14	—	—
Others	8	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	7	—	6	—	4	—	4	—	—	—
Merchant Shipping Acts, Offences against	13	—	—	2	—	1	—	2	—	2	—	—	—	1	—	4	—	7	—	13	—	12	—	1	—	—	—
Naval, Military and Air Force Laws, Offences against	6	—	—	—	—	3	—	3	—	—	—	—	—	—	—	—	—	3	—	6	—	2	—	2	—	2	—
Police Acts, Bye-Laws and Regulations, Offences against	212	6	—	4	—	14	—	24	—	20	1	9	1	12	1	43	3	239	2	211	1	244	2	63	—	4	—
Prevention of Crimes Acts, Offences against	28	—	—	2	—	1	—	2	1	3	—	—	—	4	—	7	1	22	—	28	1	18	1	8	—	4	—
Prostitution	59	—	—	—	2	4	—	4	6	4	—	4	—	—	—	4	12	44	—	59	—	47	—	12	—	—	—
Railway Offences in relation to	11	1	—	—	—	1	—	1	—	1	—	—	—	1	—	1	—	3	—	11	—	11	—	—	—	—	—
Registration Acts, Offences against	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	1	—	—	—	1	—	—	—
Revenue and Excise Laws, Offences against	4	3	—	—	—	—	—	3	—	—	—	—	—	1	—	1	—	1	—	4	—	3	—	1	—	—	—
Road Acts, etc., Offences against:																											
Motor Vehicles	65	1	—	—	—	4	—	2	—	10	—	—	—	9	—	19	—	41	—	65	—	37	—	15	—	8	—
Drunk in charge	303	5	—	1	—	64	—	104	—	14	—	2	—	107	—	123	—	76	—	303	—	188	—	77	—	38	—
Others	248	22	1	4	1	20	—	46	2	30	—	5	—	32	—	67	—	135	—	246	2	133	2	87	—	26	—
Vagrancy and Trespass Acts, Offences against	107	1	—	13	3	2	—	18	2	3	—	12	—	3	—	18	—	123	4	129	8	148	8	7	—	4	—
Other Offences	254	4	1	2	—	77	6	88	7	19	—	2	—	54	2	75	2	225	4	381	12	176	6	130	8	77	1
Total	11 184	227	28	188	31	1,011	75	1,436	135	214	141	307	100	1 546	77	2,367	218	6,562	466	10,365	819	5,680	616	2,463	140	2,212	59
High Court of Justiciary	9	—	—	—	—	2	—	4	—	—	—	—	—	2	—	2	—	2	—	8	—	3	—	—	—	6	—
Sheriff Court Violence	6,584	146	14	49	4	903	64	1,098	82	248	9	88	8	1 230	44	1,579	78	2,634	160	4 398	341	2,278	95	1,848	75	2,176	69
Sheriff Court Violence	150	2	—	2	—	13	1	18	1	6	—	2	—	24	2	32	3	95	1	143	2	82	2	36	—	24	—
Stipendiary Magistrates Court	4,456	78	15	147	27	64	10	216	52	266	33	207	54	248	31	763	157	2,825	265	3,998	574	3,324	509	279	65	5	—
Police, etc., Courts	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	11 184	227	28	188	31	1,011	75	1,436	135	514	41	307	100	1,546	77	2,367	218	6,562	466	10,365	819	5,690	616	2,463	140	2,212	59
Under 21	1 116	71	7	69	6	130	7	230	20	116	—	37	6	221	6	480	14	546	16	1,062	52	543	46	233	7	230	5
21–30	4,268	83	13	69	12	454	32	606	88	217	11	74	23	745	37	1 038	71	2,479	114	4,123	245	1,934	162	1 118	88	1,071	33
31–50	4,512	60	8	75	8	365	26	500	45	133	23	122	41	401	26	694	32	2,925	259	4,119	296	2,844	207	896	24	307	25
51 and over	1 189	13	1	23	4	62	7	100	12	24	7	28	28	89	8	149	41	812	72	1,061	126	791	111	166	11	104	8
Total	11 184	227	28	188	31	1,011	75	1,436	135	514	41	307	100	1,546	77	2,367	218	6,562	466	10,365	819	5,690	616	2,463	140	2,212	59